

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

ANDREW P. BODNAR,

Petitioner,

VS.

UNITED STATES OF AMERICA.

Respondent.

CASE NO. 5:05-cv-01689

OPINION & ORDER
[Resolving Docs. No. 1, 6, 7, 8.]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

With this Opinion and Order, the Court decides whether to adopt Magistrate Judge James S. Gallas’s Report and Recommendation on Petitioner Andrew Bodnar’s motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. [Doc. [1](#).]

For the reasons presented below, the Court **ADOPTS** the Report and Recommendation of Magistrate Judge Gallas and **DENIES** the Petitioner's motion.

I. Background

On August 27, 2001, Petitioner Bodnar executed a plea agreement with the United States (“Government”). [Doc. [6-2](#).] The parties agreed to recommend that the Court sentence Bodnar based on a United States Sentencing Guidelines (“U.S.S.G.”) offense level of 35 with a three level reduction for acceptance of responsibility, resulting in an adjusted offense level of 32. [Id. at 7](#). Under the agreement, the Government had the discretion to move for up to an additional three level

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reduction if Bodnar provided substantial assistance to the Government. [*Id.* at 16.](#) After Bodnar pleaded guilty, the Government requested a three level reduction for acceptance of responsibility and a one level reduction for some assistance to the Government. [*Id.*](#) The Court determined the total offense level to be 35 and then granted the four level reduction requested by the Government. [*Id.* at 18.](#) The resulting offense level was 31, and the resulting sentencing range was 108 to 135 months. [*Id.*](#) The Court sentenced Bodnar to 135 months of incarceration. [Doc. [6-1 at 2.](#)] Bodnar did not appeal his sentence. [*Id.*](#)

The Petitioner mailed the instant motion challenging his sentence to the Court on June 16, 2005. [Doc. [1.](#)] On July 30, 2005, the Court referred the Petitioner's motion to Magistrate Judge James S. Gallas for a Report and Recommendation. [Doc. [4.](#)] On May 11, 2006, the Government filed a brief opposing the Petitioner's motion. [Doc. [6.](#)] Petitioner Bodnar replied to the Government's opposition on May 25, 2006. [Doc. [7.](#)]

After conducting a thorough analysis of the Petitioner's motion and related briefs, on January 4, 2008, Magistrate Judge Gallas recommended that the Court deny Petitioner's motion as untimely or alternatively for lack of merit. [Doc. [8.](#)] The Magistrate Judge found that Petitioner Bodnar's motion was untimely under § 2255's one year period of limitation because Bodnar filed the petition almost four years following the date his sentence became final. [Doc. [8 at 5.](#)] Alternatively, Magistrate Judge Gallas denied Bodnar's claims on the merits; he rejected Bodnar's ineffective assistance of counsel claim and found that the Government did not breach its plea agreement. [Doc. [8 at 5-8.](#)]

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II. Legal Analysis

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of the Report and Recommendation to which an objection has been made. *See* [28 U.S.C. § 636\(b\)\(1\)](#). Parties must file any objections within ten days “after being served with a copy” of the Report. *Id.* They waive their right to appeal the Recommendation if they fail to object within the time allowed. *See, e.g., Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

In the instant case, on January 4, 2008, Magistrate Judge Gallas issued a Report and Recommendation. [Doc. [8.](#)] More than ten days have passed, and neither party has objected to his Recommendation. Having conducted its own review of the parties’ briefs on the issue, the Court agrees with the conclusions of Magistrate Judge Gallas and adopts the Report and Recommendation as its own. Therefore, the Court incorporates Magistrate Judge Gallas’s findings of fact and conclusions of law fully herein by reference.

III. Conclusion

For the reasons discussed above, the Court **ADOPTS** the Report and Recommendation of Magistrate Judge Gallas and **DENIES** the Petitioner’s motion. Further, the Court certifies, pursuant to [28 U.S.C. §1915\(a\)\(3\)](#), that an appeal from this decision could not be taken in good faith, and that

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there is no basis on which to issue a certificate of appealability. [28 U.S.C. §2253\(c\)](#); [Fed. R. App P. 22\(b\)](#).

IT IS SO ORDERED.

Dated: February 5, 2008

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE